



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**WILL WILSON**  
ATTORNEY GENERAL

November 25, 1959

*See 1969 amendment  
to art 7146 V.C.S.*

Hon. Burney Walker  
District Attorney  
Waco, Texas

Opinion No. WW-742

Re: Whether a house trailer owned by a non-resident serviceman can be considered real property and thus subject to taxation if said house trailer is situated on a plot of land owned by the non-resident serviceman.

Dear Sir:

By letter dated September 17, 1959, you state:

"I have briefed the following proposition and wish to inquire if your department is in agreement.

"The proposition is: 'Whether a house trailer owned by a non-resident serviceman can be considered real property and thus subject to taxation if said house trailer is situated on a plot of land owned by the non-resident serviceman, who does not intend that the house trailer should become a permanent part of the land, but merely temporary residence during his period of duty in the State of Texas.'

"It seems that a house trailer is inherently an item of personal property and thus the following authorities would appear to be relevant:

"a. The Soldiers and Sailors' Relief Act, 50 USA [sic; should be U.S.C.A. 7 573, states that 'For the purposes of taxation in respect of the personal property. . . of any such person (a serviceman) by any state . . . of which such person is not a resident or in which he is not domiciled . . . personal property shall not be deemed to be located or present in or have a situs for taxation in such state . . .'

"b. In Dameron v. Broadhead, 345 U.S. 322 (1953), the Supreme Court held that the use of the word 'deemed' in the above-cited act did not create a rebuttable presumption such as would permit taxation by the state of the serviceman's temporary residence in some cases.

"c. In addition, the Courts of the State of Texas, in construing Article 7146 of the Texas Civil Code relating to the taxation of real property, have stated that the test for determining whether property connected with realty is personal or real property depends upon whether there has been a real or constructive annexation of the property to realty, whether it is fit for or adaptable to uses or purposes of realty, and, preeminently, whether the party making the annexation intended the property to become a permanent annexation to the freehold. Maro Co. v. State, 168 S.W. 2d 510 (Tex.Civ.App.)

"It would be greatly appreciated if we could have your department's opinion in this connection at your earliest convenience."

Your entire letter is reproduced since it contains the authorities pertinent to solution of the question posed. We are in agreement with your conclusion. Under the facts presented, the trailer remains personalty and is not taxable in Texas.

In Attorney General's Opinion No. WW-691, a similar question was presented. The Opinion concluded that the question of whether property is real or personal for the purpose of taxation is determined by the general principles of the law of fixtures. As you have correctly pointed out, the criteria controlling the determination are as follows:

(1) There must be a real or constructive annexation of the Article in question to the realty.

(2) The Article must be adapted to uses or purposes of the realty to which it is connected.

(3) The party making the annexation must intend that the improvement become a permanent accession to the freehold.

Under the present fact situation, it is apparent that requisites (1) and (2) are met, but that the party making the annexation does not intend that the trailer become a permanent accession to the freehold. Consequently, the house trailer remains personalty and, in view of the portion of the Soldiers and Sailors Relief Act quoted above, is not taxable within the State.

SUMMARY

A house trailer owned by a non-resident serviceman situated on a plot of land owned by said serviceman cannot be considered realty where the serviceman does not intend that it become a permanent accession to the property, but merely intends that it be a temporary residence during his period of duty in the State of Texas.

Very truly yours,

WILL WILSON  
Attorney General

By   
Jack N. Price  
Assistant

JNP:bct

APPROVED:

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APPROVED FOR THE ATTORNEY GENERAL

By: Leonard Passmore